STATE OF MICHIGAN

COURT OF APPEALS

MARIE MCAULAY,

Plaintiff-Appellant,

v

ROGER CARUSO and DIANA CARUSO,

Defendants-Appellees.

UNPUBLISHED
November 9, 2004

No. 249323
Oakland Circuit Court
LC No. 02-041800-NO

Before: Zahra, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff and defendant Roger Caruso are siblings. While attending a barbeque at her brother's house, plaintiff was injured when she was chasing one of her nephews "to steal a kiss" and stepped into a depression next to the driveway. On appeal, plaintiff argues that the trial court erred in granting defendants summary disposition under MCR 2.116(C)(10) because genuine issues of material fact existed regarding whether there was a hidden danger and whether defendants knew of the hidden danger. We disagree.

A trial court's determination of a motion for summary disposition is reviewed de novo. *Taxpayers of Michigan Against Casinos v State of Michigan*, 471 Mich 306, 317; 685 NW2d 221 (2004). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for the claim. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 42; 672 NW2d 884 (2003). In determining whether a genuine issue of material fact exists, we consider the pleadings, admissions, affidavits and other documentary evidence in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

Summary disposition is appropriate if the plaintiff fails to establish a prima facie case of negligence. *Id.* To establish a prima facie case of negligence, a plaintiff must prove a duty owed by the defendant to the plaintiff, a breach of that duty, causation, and damages. *Fultz v Union-Commerce Associates*, 470 Mich 460, 463; 683 NW2d 587 (2004).

The threshold question in a negligence action is whether the defendant owed a duty to the plaintiff. *Id.* A landowner's duty to a visitor depends on the visitor's status as a trespasser,

licensee or invitee. *James v Alberts*, 464 Mich 12, 19; 626 NW2d 158 (2001); *Stitt v Holland Abundant Life Fellowship,* 462 Mich 591, 596; 614 NW2d 88 (2000). Plaintiff, a social guest at defendants' home, was a licensee. Michigan law "requires that a landowner owes a licensee a duty to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger poses an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved." *Kosmalski v St John's Lutheran Church,* 261 Mich App 56, 65; 680 NW2d 50 (2004).

We agree with the trial court that there was no genuine issue of material fact regarding whether the condition constituted a hidden danger posing an unreasonable risk of harm in this case. As the trial court noted, "a separation between grass and pavement is not uncommon and would not normally be considered a hidden danger." Such common "everyday occurrences" generally are not dangerous conditions that pose an unreasonable risk of harm. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 522-523; 629 NW2d 384 (2001). If a condition is not dangerous, it is "senseless" to consider whether it is open and obvious. *Prebenda v Tartaglia,* 245 Mich App 168, 170; 627 NW2d 610 (2001).

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Michael J. Talbot